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2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE DISTRICT OF NEVADA**

4 UNITED STATES OF AMERICA,) IN EQUITY NO. C-125-RCJ
5)
6 Plaintiff,) SUBPROCEEDING NO. C-125-B
7) 3:73-CV-00127-RCJ-WGC
8 WALKER RIVER PAIUTE TRIBE,)
9)
10 Plaintiff-Intervenor,)
11)
12 v.) **SUPERSEDING ORDER**
13) **REGARDING SERVICE AND**
14) **FILING IN SUBPROCEEDING**
15 WALKER RIVER IRRIGATION DISTRICT,) **C-125-B ON AND BY**
16 a corporation, et al.,) **UNREPRESENTED PARTIES**
17)
18 Defendants.)
19)
20)
21)
22)
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On June 3, 2013, the Court entered the Order Regarding Service and Filing in Subproceeding C-125-B On and By Unrepresented Parties (the “Unrepresented Party Order”) (Doc. 1874). For the reasons expressed at the Status Conference in this matter on July 25, 2013, the Court has determined that the Unrepresented Party Order should be modified, and in order to have all of the provisions regarding service on Unrepresented Parties in one, rather than two, Orders, the Court is entering this Order to completely supersede the Unrepresented Party Order (hereafter, “Superseding Order”).

ATTENTION – MANDATORY ACTION BY YOU IS REQUIRED

Within thirty (30) days of the date of this Superseding Order, you must take action described on pages 5 -6, paragraph 4, below.

INTRODUCTION

The Court is addressing case management issues related to Subproceeding C-125-B. You are receiving this Superseding Order because you are a defendant in Subproceeding C-125-B who filed a Notice of Appearance in this matter and are not represented by an attorney (hereafter, “Unrepresented Parties”).

The purpose of this Superseding Order is to identify and implement the alternative methods described herein for all parties to serve papers.

BACKGROUND

Previously, this Court required the United States and the Walker River Paiute Tribe to serve persons and entities holding certain categories of water rights pursuant to the provisions of Rule 4 of the Federal Rules of Civil Procedure with a Notice in Lieu of Summons that required them to file a Notice of Appearance and Intent to Participate. Thus far, the United States and Walker River Paiute Tribe have served approximately _____ parties, and of those, approximately _____ are represented by an attorney. In addition, almost 1,000 parties have filed a Notice of Appearance and Intent to participate and are not represented by an attorney. Finally, the remaining approximately _____ have not appeared at all.

Once service under Rule 4 is complete, the provisions of Rule 5 of the Federal Rules of Civil Procedure control the service of papers filed in this matter. Because of the large number of parties who have not appeared at all, and because of the large number of parties who have appeared but who are not represented by counsel, the Court is entering this Superseding Order to clarify which papers must be served, on whom they must be served, and how they must be served under Rule 5 as this matter moves forward.

Rule 5(a)(2) provides that no service is required on a party who has failed to appear. For purposes of that Rule and as applied to this case, a party here who has been properly served

1 and has not filed a Notice of Appearance and Intent to Participate need not be served unless and
2 until that party does so appear. *See Cutting v. Allenstown*, 936 F.2d 18, 21, n. 1 (1st Cir. 1991).
3 With respect to parties who have appeared, Rule 5 controls service of papers on them. Under
4 that Rule, most papers filed in this matter are required to be served on every other party. Rule
5 5 specifies several methods for this service. Two of the most frequently used methods are
6 service by mail and service by electronic means.
7

8 Under this Court's Local Rules, parties who are represented by attorneys are allowed to
9 serve other parties represented by attorneys using the Court's Case Management/Electronic
10 Case Filing system ("CM/ECF System"); however, use of the CM/ECF System is generally
11 limited to attorneys representing a party, who are required to file and receive all papers using
12 this electronic system. Authorized users do not receive paper copies of filings by mail because
13 the CM/ECF System sends them e-mail notice of all filings with a link to an electronic copy of
14 the document in the CM/ECF System. Use of the CM/ECF System is easy, efficient and
15 economical. This Order does not change the requirement that attorneys use the CM/ECF
16 System.
17

18 Because of the large number of Unrepresented Parties who have appeared, the Court has
19 identified a need for an effective and efficient method for the Court, as well as all parties, to
20 serve papers on Unrepresented Parties, and to allow Unrepresented Parties to serve papers.
21 Unless the CM/ECF System is made available for service on parties without attorneys, service
22 of documents upon Unrepresented Parties must be accomplished by another means. Typically,
23 parties without an attorney are served paper copies of filings by mail. Although the cost of
24 copying and mailing a paper may not be significant when a case includes only a few
25 unrepresented parties, where there are almost 1,000 unrepresented parties, as is the case here,
26 the cost of postage alone for every paper filed is at a minimum approximately
27
28

1 \$460.00.

2 Although the Court is concerned with, among other things, the cost to the judiciary, of
3 greatest concern to the Court is that the cost of requiring every party to serve every filing by
4 mail will unfairly impede the participation of all parties to this matter whether represented or
5 unrepresented. The Local Rules of this Federal Court allow papers to be filed or served by
6 electronic means. Nevada Federal Court Local Rules 5-3 and 5-4 allow electronic filing and
7 service pursuant to Special Order No. 109. Further, the Court may amend the electronic filing
8 procedures in Special Order No. 109 “in keeping with the needs of the Court.” Therefore, the
9 Court believes that the circumstances of this subproceeding, the needs of the Court, and the
10 interests of fairness require this Court to develop service procedures for the remainder of this
11 subproceeding.
12

13 **FINDINGS AND CONCLUSIONS**
14

15 Accordingly, and based upon the foregoing, the Court finds:

16 **THAT** the alternative methods addressed in this Order for electronic service on
17 Unrepresented Parties and filing by such parties through the Clerk’s Office are in keeping with
18 the needs of the Court and all parties, and are consistent with the Federal Rules of Civil
19 Procedure, the Local Rules of this Court, and Special Order No. 109;

20 **THAT** the procedure set forth herein for Unrepresented Parties to request to be on the
21 Court’s “postcard service” list, including the conditions for them to remain on the “postcard
22 service” list, is a reasonable exception to electronic service; and
23

24 **THAT** the additional limited use of the CM/ECF System and the establishment and
25 maintenance of the public website described below will not overburden the Court staff.
26
27
28

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

Parties Who Have Been Served, But Who Have Not Appeared:

1. No service is required under Rule 5 on parties who have been properly served under Rule 4 and who have not filed a Notice of Appearance and Intent to Participate, unless and until they so appear.

Establishment of a Public Website:

2. The Clerk of the Court has established and will maintain a website that is separate from the Court's official docket and available to the public, on which the Clerk has and will post Orders and other filings in Subproceeding C-125-B.

3. This separate public website may be accessed directly at: ecf.nv.uscourts.gov/casedisplay or by selecting "Walker River" on the District of Nevada's official website: www.nvd.uscourts.gov.

Service on Unrepresented Parties:

4. **Election of Method of Service:** It is mandatory that Unrepresented Parties must either consent to receive service by e-mail notification or request to receive service by postcard. Within 30 days of this Superseding Order, every Unrepresented Party must complete and return to the Court the attached notice concerning your election of service. The notice must be mailed to:

U.S. District Court Clerk, Attn. C-125-B Notice Clerk
Bruce R. Thompson Courthouse
400 S. Virginia Street, Rom 301
Reno, Nevada 89501

If you responded to the Court's June 3, 2013 Unrepresented Party Order, and informed the Court of your election of a method of service, you need not complete and return the attached Notice. If you simply failed to respond to that June 3, 2013 Order, you must respond to this

1 one. If you have access to a computer and the Internet, the Court strongly encourages you to
2 consent to electronic service in order to reduce the costs associated with service not only for all
3 other parties, but also for yourself because any paper you file in this matter will have to be
4 served by you on other parties as provided in this Order.

5
6 5. **Electronic Service:** If an Unrepresented Party consents to electronic service as
7 hereinafter provided, that party will receive an e-mail from the court's CM/ECF System each
8 time a document is filed in this matter that includes a link to the public website where the party
9 may view, print and/or save the filing at no cost. You may wish to create a new e-mail address
10 to receive notice from the CM/ECF System that is separate from your personal or other e-mail
11 addresses.

12
13 6. **Service By Postcard:** If an Unrepresented Party does not consent to be served
14 electronically, that party will be mailed a postcard each time any other party files a paper
15 required to be served by Rule 5(a) of the Federal Rules of Civil Procedure. Such notice must
16 contain the following information: language specifically informing the recipient that the
17 recipient is receiving a NOTICE that a document has been filed in this litigation; language
18 informing the recipient that they are receiving the Notice as ordered by the Court; the date the
19 document was filed; the name of the party or parties who filed the document; the Court's
20 docket number for the filed document; the name of the document that was filed; the address of
21 the public website established by the Court where the party may view, print and/or save the
22 filing at no cost; and the locations at which the recipient can view and/or obtain a paper copy of
23 the document upon payment of copying costs. A postcard notice may provide notice of the
24 filing of multiple documents, and may provide notice on behalf of more than one party.

25
26 7. **Filings For Which Postcard Service Not Required:** Consistent with Rule
27 5(a)(1)(D) of the Federal Rules of Civil Procedure and LR 7-5 of the U.S. District Court Rules
28 for the District of Nevada, the postcard notice provided for in paragraph 4 above will not be

1 required for a motion that may be heard *ex parte*. As well, the postcard notice provided for in
2 paragraph 4 above will not be required for any other filing (notice, pleading, motion, etc.) that
3 does not affect the rights of others and does not raise a significant issue of law or fact. At the
4 conclusion of every filing, the filing party shall state whether the materials filed are subject to
5 the postcard notice provided for in paragraph 4 above and, as a result, whether they have served
6 Unrepresented Parties by postcard. In the event that the Court, for whatever reason, disagrees
7 with a filing party's determination that a filing is not subject to postcard service, the Court will
8 instruct the filing party to serve Unrepresented Parties by postcard.
9

10 8. Any party filing any pleading requiring postcard notice shall also mail, by first
11 class mail, a copy of the pleading to the following locations at which a physical copy of
12 substantive pleadings will be maintained:

13 A. (to be completed), and

14 B. (to be completed).
15

16 9. The Court, at a later date, will adopt special procedures regarding the timing of
17 and requirement for responses to motions.

18 10. In the event circumstances are presented to the Court that require the Court to
19 modify the requirements of this Superseding Order, the Court will provide reasonable notice to
20 such affected parties of the change.
21

22 **Filings by Unrepresented Parties:**

23 11. Unrepresented Parties may file documents in Subproceeding C-125-B by mail or
24 in person with the Clerk of the Court at:

25 Clerk of the Court, Bruce R. Thompson Courthouse
26 400 S. Virginia Street, Room 301
27 Reno, Nevada 89501
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1 12. In connection with all such filings, Unrepresented Parties must follow the Local
2 Rules for the Federal District Court of Nevada, which are available through the Court's official
3 website (www.nvd.uscourts.gov) and at the Clerk's Office.

4 **Changes of Address and/or E-mail:**

5 13. Whether an Unrepresented Party has elected to receive electronic notice of
6 filings as described herein, elected to receive service by postcard, or made no service election,
7 every Unrepresented Party must notify the Court if their mailing and/or e-mail addresses
8 change. In the event that the Court receives notification from the U.S. Postal Service that the
9 address associated with an Unrepresented Party is no longer valid, the Court shall remove that
10 address from the list of addresses for Unrepresented Parties, and the Court and represented
11 parties shall no longer send postcards to the invalid address. Any Unrepresented Party whose
12 address is determined to be invalid may resume receiving postcard notice by providing the
13 Court with his/her valid address.
14

15 14. Notice of all e-mail and/or mailing address changes must be sent to the Court at:

16
17 U.S. District Court Clerk, Attn. C-125-B Notice Clerk
18 Bruce R. Thompson Courthouse
19 400 S. Virginia Street, Rom 301
20 Reno, Nevada 89501

21 15. Unrepresented Parties who fail to notify the Court of mailing or e-mail address
22 changes and who, as a result of such failure, do not receive a filed document will nevertheless
23 be deemed to have notice of that document and all subsequent orders and other filings in this
24 matter.

25 16. The Clerk of the Court shall mail a copy of this Order to all Unrepresented
26 Parties who have not elected to receive electronic notice of filings and who the Court and the
27 United States of America have identified as of _____, 2013.
28 Thereafter, the Clerk of the Court shall mail a copy of this Order to all new Unrepresented

Parties identified after that date on a periodic basis. When the Clerk's Office makes these periodic mailings, it shall insert a due date for Unrepresented Parties to return the **Notice Selecting Method of Service** that is at least thirty days after the mailing date. The United States shall assist the Clerk's Office with compiling the initial list of persons and entities to receive a copy of this Order.

Required Form to Complete and Return to the Court:

17. The completed **Notice of Selecting Method of Service** ("Notice") shall be returned to:

U.S. District Court Clerk, Attn. C-125-B Notice Clerk
Bruce R. Thompson Courthouse
400 S. Virginia Street, Rom 301
Reno, Nevada 89501

18. Any Unrepresented Party who elects not to register for electronic notice of filings of documents and does not complete Part I of the attached **Notice** must request to be on the Court's "postcard service" list, and complete Part II of the same **Notice**.

19. Unrepresented Parties needing assistance with the electronic notice and/or filing procedures provided for herein are encouraged to contact the Clerk of Court at 775-686-6800, 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays.

19. Unrepresented Parties are encouraged to keep a copy of this Superseding Order and a copy of their completed **Notice Selecting Method of Service** for future reference.

20. **The cost associated with postcard service is potentially extremely high. Therefore, the Court strongly encourages all Unrepresented Parties to consent to electronic service because e-mail notice is prompt, helps keep parties apprised of the proceeding's status, and avoids significant mailing expenses. The Court appreciates your careful attention to this Superseding Order.**

21. This Order supersedes in its entirety the Unrepresented Party Order of June 3, 2013 (Doc. 1874).

UNITED STATES DISTRICT JUDGE